

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER U-33591

JOY MATURIN, ET AL.

Docket No. U-33591 In re: Petition to be Released from Bayou Teche Water Works.

(Decided at the April 19, 2017 Business and Executive Session)

Overview

This proceeding relates to a dispute arising out of concerns by complainants Joy and Norris Maturin (collectively, “Complainants”) regarding the water service provided by Bayou Teche Water Works, Inc. (“Bayou Teche”). The Complainants requested that the Louisiana Public Service Commission (“LPSC” or “Commission”) release them from any obligation to purchase water from Bayou Teche. However, upon the issuance of the Commission’s General Order dated August 22, 2016 (“2016 General Order”), the Complainants moved that the proceeding be dismissed for lack of subject matter jurisdiction. The Complainants later asserted that dismissal should be granted without a specification that the dismissal is made with prejudice or without prejudice. Bayou Teche supports dismissal of the proceeding, but only if it is granted with prejudice.

For the reasons described more fully *infra*, we find that the Complainants’ petition should be dismissed without prejudice.

Background

History of Commission regulation of rural, nonprofit water and wastewater systems

At its April 16, 1969 Business and Executive Session, the Louisiana Public Service Commission (“Commission” or “LPSC”) considered and approved an exemption from the Commission’s jurisdiction (“1969 Exemption”) for water systems that received financing from the Farmers’ Home Administration (“FHA”). In 2004, the Commission expanded the scope of the 1969 Exemption to include wastewater systems that were funded by the FHA and/or the United States Department of Agriculture (“USDA”) Rural Utility Service (“RUS”).¹ Through the initial grant and expansion of the 1969 Exemption, the Commission ceased to exercise ratemaking authority over rural, nonprofit water and wastewater systems that are wholly-owned by their respective customer bases and receive financing from the FHA and/or the USDA. Instead, the FHA and later the USDA oversaw the rates charged by the water and wastewater systems that those agencies financed.

¹ See General Order dated July 9, 2004, Docket No. R-27962, *In re: Amendment to the General Order dated April 18, 1969 – “Exempting of Farmers’ Home Administration sponsored water systems from Commission regulations”*; General Order (Corrected) dated May 31, 2005, Docket No. R-27962, *In re: Amendment to the General Order dated April 18, 1969 – “Exempting of Farmers’ Home Administration sponsored water systems from Commission regulations”*.

By letter dated October 18, 2010, the USDA informed the Commission that the USDA's Office of Rural Development ("ORD") would relinquish control of rural, nonprofit water and wastewater systems, and would cease to exercise control over the rates charged to those systems' customers.² The Commission subsequently voted to rescind the 1969 Exemption, and resumed its exercise of ratemaking jurisdiction over rural, nonprofit water and wastewater systems that are wholly-owned by their customers.³

On June 9, 2016, Governor John Bel Edwards signed Act No. 444 of the 2016 Regular Session of the Louisiana Legislature ("Act 444") into law. *Inter alia*, Act 444 purports "to regulate rate change procedures...and to provide for related matters" relative to "water cooperatives," e.g., nonprofit water systems that were eligible to receive financing from the USDA prior to January 1, 2011. The Commission then voted at the July 26, 2016 Business and Executive Session to adopt a draft order that would grant another exemption from the Commission's jurisdiction to nonprofit water systems that are wholly-owned by their members and are eligible to receive USDA funding. This draft order was officially promulgated as the General Order dated August 22, 2016 ("2016 General Order").

Nature of the case

This matter was initiated on March 20, 2015, when petitioner Joy Maturin submitted a letter to the Commission that was accompanied by, among other things: a copy of a Louisiana Department of Health and Hospitals ("LDHH") Administrative Order ordering that Bayou Teche perform certain LDHH remedial action items; and a collection of approximately 850 signatures, ostensibly from customers of Bayou Teche (collectively, "Signatories"), demanding that a new, privately-owned water company take over operations and maintenance of the Bayou Teche water district and provide potable water for the district. Mrs. Maturin's letter to the Commission therefore requested that she and the signatories be excused and released from any obligations to Bayou Teche, and allowed to subscribe to Louisiana Water Company as their potable water supplier.

A status conference was convened on May 6, 2015, after which Mrs. Maturin submitted a formal Amended Complaint on June 5, 2015. After a dispute over Mrs. Maturin's ability to represent the Signatories, the tribunal determined that the Complainants, Bayou Teche, and the

² See Tr. Nov. 10, 2010 Bus. & Exec. Sess. at 47.

³ See *generally* Tr. Nov. 10, 2010 Bus. & Exec. Sess. at 47-58.

Louisiana Public Service Commission Staff (“Staff”) were the only parties to this proceeding. Following a status conference convened on June 2, 2016, the Complainants filed a Second Supplemented & Amended Petition on June 13, 2016, in which the Complainants requested certain declaratory relief.⁴ Bayou Teche subsequently filed an Answer to Original and Supplemented & Amended Complaints on June 21, 2016, denying all of the Complainants’ allegations (except as to the legal status of Bayou Teche) and raising certain jurisdictional and procedural objections.

The motions for dismissal

On July 15, 2016, the Complainants filed a Motion for Voluntary Dismissal, requesting that the proceeding be dismissed without prejudice. This motion represented that the Complainants no longer wish to be individually released as customers of Bayou Teche, and that the Complainants “are now instead pursuing a separate civil action, for mass relief, through an action that has been filed and is pending in the 16th Judicial District Court, Iberia Parish, for past and future compensation and damages for the acts and/or omissions of [Bayou Teche] that have resulted in continually defective and unusable water.” On July 22, 2016, the tribunal issued a Notice of Opportunity to respond to Motion for Voluntary Dismissal Without Prejudice, establishing a briefing schedule for briefs related to that motion.

On August 4, 2016, the Complainants filed a Memorandum/Motion to Dismiss for Lack of Subject Matter Jurisdiction (“Jurisdiction Motion”). According to the Complainants, Act 444 and the Commission’s decision to adopt the 2016 General Order divested the Commission of jurisdiction over nonprofit rural water companies such as Bayou Teche.

By order dated August 5, 2016, the Commission’s Administrative Hearings Division issued a Notice of Revised Procedural Schedule for Responding to Motions to Dismiss that: (1) extended the deadline for parties to file a response to the Complainants’ July 15, 2016 Motion for Voluntary Dismissal; and (2) allowed the other parties to the docket an opportunity to file a response to the Complainants’ July 15, 2016 and August 4, 2016 motions. The Notice further provided an opportunity for the Complainants to file a reply brief.

⁴ Specifically, the Complainants requested: (1) a declaration that the water provided to them prior to and at the time of filing was inadequate; (2) a declaration that the water provided to the Complainants continues to be inadequate; (3) a declaration that the Complainants are entitled to leave, and would be granted leave from Bayou Teche, but for the fact that they currently lack financial resources to so leave; and (4) a declaration that the Complainants shall be granted a conditional release from Bayou Teche, and shall be allowed to leave Bayou Teche upon their securing appropriate financial resources to effectuate the leave.

Bayou Teche then filed a Reply to Complainants' Motion for Voluntary Dismissal Without Prejudice on August 22, 2016, in which Bayou Teche opposed the entry of a judgment of dismissal without prejudice. Bayou Teche prayed that the Petitioners' Motion for Voluntary Dismissal should only be granted if the matter is dismissed with prejudice. Shortly thereafter, Bayou Teche filed a Reply to Complainants' Motion to Dismiss for Lack of Jurisdiction on August 29, 2016. The Louisiana Public Service Commission Staff ("Staff") filed a Reply Brief on the same date, arguing that the matter should be dismissed with prejudice or, alternatively, determined to be moot due to the issuance of the 2016 General Order.

Although not provided for in the procedural schedule, Bayou Teche filed a Surreply to Reply Brief of the Commission Staff on September 7, 2016. Finally, the Complainants filed a Reply to Bayou Teche's Opposition to Claimant's Motion to Dismiss for Lack of Jurisdiction on September 9, 2016, in which the Complainants expressly stated that they now regard their July 15, 2016 Motion for Voluntary Dismissal as "both withdrawn and moot[.]"⁵

On January 13, 2017, the administrative law judge ("ALJ") issued a Ruling on Motion to Dismiss for Lack of Subject Matter Jurisdiction and Notice of Status Conference, in which the ALJ concluded that there was insufficient factual evidence in the record to demonstrate that Bayou Teche is a nonprofit water system that is wholly-owned by its members, and which could be subject to either Act 444 or the 2016 General Order. The ALJ thus determined that the questions presented by the Claimant's Jurisdiction Motion – i.e., whether or not Act 444 and the 2016 General Order divested the Commission of jurisdiction to consider the Complainants' dispute, and whether a dismissal of this matter must be rendered with prejudice – were not procedurally ripe for adjudication, and accordingly denied the Jurisdiction Motion. However, the ALJ indicated that the tribunal might be willing to reconsider its denial of the Jurisdiction Motion following the introduction of appropriate factual evidence into the official record of this proceeding.

On January 17, 2017, the Complainants filed a Motion to Reconsider Motion to Dismiss for Lack of Subject Matter Jurisdiction ("Motion to Reconsider"), in which the Complainants re-urged the Jurisdiction Motion. The Motion to Reconsider was accompanied by an Affidavit of Joy D. Maturin and an Affidavit of Norris Maturin, Jr., with each affidavit averring that Bayou Teche is a non-profit water cooperative that is wholly owned by its members. Shortly thereafter,

⁵ Emphasis in original.

on January 24, 2017, Bayou Teche and the Complainants submitted a Joint Stipulation of Fact, stipulating and agreeing that Bayou Teche is a non-profit water cooperative that is wholly owned by its members.

A status conference was then convened on January 26, 2017, at which time the ALJ informed the parties that the Joint Stipulation of Fact did not provide ample factual evidence sufficient to justify reconsideration of the Motion to Dismiss for Lack of Subject Matter Jurisdiction that was filed by the Complainants on August 4, 2016. BTWW and the Complainants thereby agreed to submit a new joint stipulation of fact for the tribunal's consideration.

Finally, on February 2, 2017, the Complainants and Bayou Teche submitted a Second Joint Stipulation of fact, stipulating and agreeing: (1) that Bayou Teche is a nonprofit water cooperative that is wholly owned by its members, and has been since its incorporation in 1972; (2) that Bayou Teche is eligible to receive USDA funding, and has been eligible since its incorporation in 1972; (3) that Bayou Teche has applied for and received USDA funding prior to January 1, 2011; and (4) that Bayou Teche, in accordance with Act 444, is initiating a rate increase request with the USDA. The Second Joint Stipulation of Fact was accompanied by an Affidavit of Melvin Bertrand, Jr., President and a board member of Bayou Teche. Mr. Bertrand's affidavit averred to the substance of the stipulations included in the Second Joint Stipulation of Fact.

On March 3, 2017, the ALJ issued the Proposed Recommendation of the Administrative Law Judge ("Proposed Recommendation"), in which the ALJ recommended that the proceeding be dismissed without prejudice. No exceptions to the Proposed Recommendation were filed within the time authorized by Rule 56 of the Rules of Practices and Procedures of the Louisiana Public Service Commission. Accordingly, on March 27, 2017, the ALJ issued the Final Recommendation of the Administrative Law Judge, recommending the same conclusions contained in the Proposed Recommendation.⁶

The ALJ's Final Recommendation was considered at the Commission's Business and Executive Session held on April 19, 2017. On motion of Vice Chairman Skrmetta, seconded by

⁶ On April 6, 2017, the ALJ issued a corrected version of the Final Recommendation that corrected an error in the summary of the "Overview" regarding the Complainants' request that the matter be dismissed without specifying that the dismissal be made with or without prejudice. No substantive changes were made to the recommendation itself.

Chairman Angelle, and unanimously adopted, the Commission voted to adopt the Final Recommendation of the Administrative Law Judge and dismiss the proceeding without prejudice.

Applicable Law

Jurisdiction

The Commission exercises jurisdiction in this proceeding pursuant to Article IV, Section 21 of the Louisiana Constitution of 1974, which provides in pertinent part:

The commission [sic] shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and perform other duties as provided by law.

Additional regulatory authority has been delegated to the Commission by the Legislature.

Louisiana Revised Statute 45:1163(a)(1) provides that

The Commission shall exercise all necessary power and authority over any street, railway, gas, electric light, heat, power, waterworks, or other local public utility for the purpose of fixing and regulating the rates charged or to be charged by and service furnished by such public utilities.

Louisiana Revised Statute 45:1196 authorizes a complainant alleging a violation of a Commission order, rule, regulation, rate, or classification by an LPSC-jurisdictional entity to file a petition with the Commission stating the nature of the complaint. If reasonable grounds for the complaint exist, then the Commission is mandated to investigate the complainant's allegations. Additionally, Louisiana Revised Statute 45:1197 states that the Commission may order the LPSC-jurisdictional entity to pay an award of damages to the complainant if, after a hearing on the complaint, the Commission determines that the complainant is entitled to an award due to the LPSC-jurisdictional entity's violation of a Commission order, rule, regulation, rate, or classification.

Pursuant to the Commission's General Order dated June 1, 1995 ("1995 General Order"), a consumer receiving service from a water utility who feels aggrieved with the service being offered may apply to the Commission for an order directing his present supplier to show cause why the consumer should not be released from that supplier.

Parties' Positions

As an initial matter, we note that the Complainants have stated that they consider their July 15, 2016 Motion for Voluntary Dismissal to be withdrawn. Accordingly, we need not

address the arguments raised in support or in objection thereto, and consider only the arguments and positions raised in connection with the Jurisdiction Motion.

The Complainants

In their Jurisdiction Motion, the Complainants alleged that all pending motions and the entire proceeding have been rendered moot by the enactment of Act 444 and the Commission's adoption of the draft order that would eventually be promulgated as the 2016 General Order. The Complainants asserted that, in connection with the passage of Act 444, the Commission ceased to have jurisdiction over the respondent in this matter (i.e., Bayou Teche), and so the matter should be dismissed for lack of subject matter jurisdiction.

In their Reply to Bayou Teche's Opposition to Claimant's Motion to Dismiss for Lack of Jurisdiction, the Complainants argued that a distinction of "with or without prejudice" should only be included as part of voluntary dismissal to indicate an individual's ability to re-file a claim at a later date. If a tribunal lacks competent jurisdiction, then a claim could never be re-filed with that tribunal at a later date. The Complainants thus contended that in this instance, the distinction is irrelevant and inappropriate, and so the matter should simply be dismissed without specifying "with prejudice" or "without prejudice."

The Complainants further noted that Act 444 and the 2016 General Order apply only to water cooperatives that are wholly-owned by their members. The Complainants argued that such entities are not "public" and therefore are not subject to the Commission's constitutional mandate to regulate public utilities. Finally, the Complainants claimed that the Commission's mandate to regulate common carriers and public utilities does not extend to adjudication of the rights of individuals.

Bayou Teche

In its reply to the Complainants' Jurisdiction Motion, Bayou Teche argued that the Complainants' Jurisdiction Motion should only be granted if this matter is dismissed with prejudice. Bayou Teche claims that Act 444 did not divest the Commission of jurisdiction over nonprofit water cooperatives for the purposes of resolving pending legal disputes; nor did Act 444 alter the LPSC's constitutional mandate to regulate public water systems and ensure compliance with safe water standards. According to Bayou Teche, Act 444 merely added statutory provisions "relative to water cooperative rate change requests, which are to be

determined in conjunction with oversight by the U.S.D.A. and the Louisiana Department of Health and Hospitals.”⁷ Bayou Teche then drew a distinction between rate-related claims and the Complainants’ petition to be released from a public utility, and suggested that the Commission retains jurisdiction to adjudicate water cooperative-related claims that do not implicate rates.

In its Surreply to Reply Brief of the Commission Staff, Bayou Teche addressed Staff’s conclusion that, if the tribunal should determine that a Judgment of dismissal would be null and void, then the docket would become moot due to the 2016 General Order. Bayou Teche reiterated its earlier argument that Act 444 and the 2016 General Order do not alter the Commission’s jurisdiction to regulate all public utilities, and as such the Commission retains jurisdiction to adjudicate the Complainants’ pending Motion for Voluntary Dismissal (which was filed prior to the issuance of the 2016 General Order). Bayou Teche concurred with Staff that the matter should be dismissed with prejudice; however, Bayou Teche suggested that if the matter is not dismissed with prejudice, then it should be transferred to the USDA for determination by that agency.

The Commission Staff

In its Reply Brief, Staff concluded that this matter should be dismissed with prejudice based on the Commission no longer exercising subject matter jurisdiction over water cooperatives. Staff alternatively argued that, if the tribunal should determine that a Judgment of dismissal with prejudice would be null and void, then the tribunal should find or acknowledge that this docket has become moot due to the issuance of the 2016 General Order.

Findings of Fact

At its April 16, 1969 Business and Executive Session, the Commission considered and approved an exemption from the Commission’s jurisdiction for water systems that received financing from the FHA.⁸ In 2004, the Commission extended this 1969 Exemption to include nonprofit rural wastewater systems that received financing from the FHA and/or the USDA.⁹

Pursuant to the initial grant and expansion of the 1969 Exemption, the Commission ceased to exercise ratemaking authority over rural, nonprofit water and wastewater systems that are wholly-owned by their respective customer bases and that receive financing from the FHA and/or the USDA. Instead, those agencies oversaw the rates charged by the water and wastewater systems that they financed.

⁷ Emphasis in original.

⁸ This exemption was memorialized by a minute entry issued on April 18, 1969.

⁹ See General Order dated July 9, 2004, Docket No. R-27962, *In re: Amendment to the General Order dated April 18, 1969 – “Exempting of Farmers’ Home Administration sponsored water systems from Commission regulations”*; General Order (Corrected) dated May 31, 2005, Docket No. R-27962, *In re: Amendment to the General Order dated April 18, 1969 – “Exempting of Farmers’ Home Administration sponsored water systems from Commission regulations”*.

In 2010, the USDA informed the Commission that the USDA's ORD would relinquish control of rural, nonprofit water and wastewater systems, and would cease to exercise control over the rates charged to those systems' customers.¹⁰ In response to this information, the Commission voted to rescind the 1969 Exemption that was previously granted to nonprofit water systems (and later expanded to include nonprofit wastewater systems), and resumed its exercise of ratemaking jurisdiction over those systems.¹¹

On June 9, 2016, Governor John Bel Edwards signed Act 444 into law. *Inter alia*, Act 444 purports "to regulate rate change procedures...and to provide for related matters" relative to nonprofit water utility cooperatives that were eligible to receive financing from the USDA prior to January 1, 2011.

The Commission voted at the July 26, 2016 Business and Executive Session to adopt a draft order that would grant another exemption from the Commission's jurisdiction to nonprofit water systems that are wholly-owned by their members and are eligible to receive USDA funding. This draft order was officially promulgated as the 2016 General Order.

Bayou Teche is a non-profit water cooperative that is wholly owned by its members, and has been wholly owned by its members since its incorporation in 1972. Bayou Teche is eligible to receive USDA funding, and has been so eligible since its incorporation in 1972.¹²

Analysis

We note at the outset that the Complainants are incorrect in asserting that the Commission categorically lacks jurisdiction to adjudicate claims brought by individuals against public utilities. The Louisiana Constitution implicitly authorizes this Commission to promulgate safety regulations pertaining to the operation of LPSC-jurisdictional public utilities.¹³ Furthermore, Louisiana Revised Statutes 45:1196 and 1197 expressly authorize this Commission to adjudicate claims alleging a violation of a Commission order by an LPSC-jurisdictional entity. The 1995 General Order specifically authorizes customers of a water company to petition this Commission for permission to obtain water service from another provider, and the Louisiana Supreme Court has upheld decisions rendered pursuant to that General Order.¹⁴ Consequently, the Commission may adjudicate disputes affecting the rights of individuals (e.g., allegedly-aggrieved customers of an LPSC-jurisdictional utility), provided that there is no other impediment to the exercise of subject matter jurisdiction.

Act 444 applies to "water cooperatives" that were eligible to receive financing from the USDA prior to January 1, 2011.¹⁵ The act defines a "water cooperative" as a nonprofit water utility cooperative or corporation that is wholly owned by water user members and eligible to

¹⁰ See Tr. Nov. 10, 2010 Bus. & Exec. Sess. at 47.

¹¹ See generally Tr. Nov. 10, 2010 Bus. & Exec. Sess. at 47-58.

¹² Second Joint Stipulation of Fact (Feb. 2, 2017); Affidavit of Melvin Bertrand, Jr. (Feb 2, 2017). Compare La. R.S. 45:1601 (defining "water cooperatives" subject to Act 444).

¹³ See La. Const. Art. IV, § 21(C).

¹⁴ See, e.g., *Hopkins v. Louisiana Pub. Serv. Comm'n*, 10-0255 (La. 5/19/2010), 41 So.3d 479

¹⁵ La. R.S. 45:1603.

receive financing from a lending entity;¹⁶ a “lending entity” is defined as “the governmental or financial entity providing financing to a water cooperative.”¹⁷

The Complainants and Bayou Teche have submitted affidavits from their respective witnesses, averring that Bayou Teche is a non-profit water cooperative that is wholly owned by its members. Bayou Teche’s witness in particular averred that Bayou Teche has been eligible to receive USDA funding since its incorporation in 1972 (i.e., prior to January 1, 2011). We therefore find that Bayou Teche is a “water cooperative” as defined by and subject to the provisions of Act 444.

We must therefore consider the impact that Act 444 has had upon the Commission’s exercise of jurisdiction over Bayou Teche. According to the Complainants and Staff, Act 444 and the newly-promulgated 2016 General Order divest this Commission of subject matter jurisdiction over water cooperatives. Conversely, Bayou Teche observes that Act 444 does not affirmatively or explicitly create any such exemption for water cooperatives. Considering the text of Act 444 in a vacuum, it is hypothetically possible that this Commission could exercise concurrent jurisdiction over water cooperatives with the USDA, the LDHH, and/or other third-party government or financial entities.

Bayou Teche, however, is mistaken in interpreting Act 444 as merely requiring rate change requests to be reviewed by the Commission in conjunction with oversight by the USDA and the LDHH. The Commission possesses original, exclusive and plenary jurisdiction to fix and change the rates of public utilities. Because the Commission is a constitutional creature, this ratemaking authority cannot be curtailed by Legislative statute.¹⁸ Accordingly, any statutorily-derived division of ratemaking jurisdiction between this Commission and third-parties would be *per se* unconstitutional, and so Act 444 cannot be interpreted to create such a regulatory scheme.

Given that the Legislature cannot enact a statute that would curtail the Commission’s jurisdiction, Act 444 could not have permanently and irrevocably divested this Commission of jurisdiction over nonprofit member-owned water cooperatives. However, this Commission has, on occasion, granted exemptions from its original and plenary ratemaking authority over public

¹⁶ La. R.S. 45:1601(4).

¹⁷ La. R.S. 45:1601(2).

¹⁸ See *Daily-Advertiser v. Trans-La*, 612 So.2d 7, 16-17 (La. 1993). The Legislature may, however, bestow additional regulatory authority on the Commission via statute. *Id.* at 17.

utilities.¹⁹ The 2016 General Order itself recognizes that the Commission previously exempted FHA-sponsored water systems from its jurisdiction, and then goes on to declare that nonprofit water cooperatives shall again be exempt from Commission regulation, “consistent with the passage of Act 444.”

Consequently, this Commission has voluntarily divested itself of subject matter jurisdiction over nonprofit, rural water systems (i.e., “water cooperatives”) when it promulgated the 2016 General Order, a result consistent with the original 1969 Exemption that was granted to such systems in April 1969. No party challenged the promulgation of the 2016 General Order according to the procedures established by law,²⁰ and so subject matter jurisdiction to consider the Complainants’ dispute is currently lacking.

Bayou Teche suggests that, if the Commission no longer retains subject matter jurisdiction over this dispute, then this proceeding should either be “dismissed with prejudice, or transferred to the USDA for final determination by a new agency.” However, transfer does not appear to be a viable option in this instance. Bayou Teche relies upon La. R.S. 36:904(C), which applies to transfers of legal proceedings involving executive agencies that were transferred in accordance with the Executive Reorganization Act.²¹ In the present case, no executive agency is being transferred within the executive branch of government, and so Bayou Teche’s cited authority is inapposite. Conversely, it is not apparent from the record that the USDA has a comparable adjudicatory forum or process in place to which this matter might be transferred.

In the absence of any such identifiable forum, jurisprudence suggests that dismissal without prejudice is warranted. As stated by the First Circuit, “when an action is dismissed on procedural grounds rather than on the merits, it should be dismissed without prejudice because no adjudication on the merits has taken place.”²²

Finally, and perhaps most importantly, it should be noted that the Commission rescinded the original 1969 Exemption that was granted to nonprofit water systems in April 1969, and expanded to include nonprofit wastewater systems in 2004. Effectively then, the 1969 Exemption amounted to a temporary relinquishment of subject matter jurisdiction. It is possible – however unlikely – that the Legislature could eventually enact new legislation that would repeal or

¹⁹ It should be noted that – contrary to the Complainants’ assertions – the Commission regularly exercises ratemaking authority over electric cooperatives. The Complainants’ interpretation of the scope of the Commission’s jurisdiction is therefore incorrect.

²⁰ See La. Const. Art. Article IV, § 21(E); *see also* La. R.S. 45:1192.

²¹ See La. R.S. 36:1.

²² *Lewis v. Jindal*, 15-1329 (La.App. 1 Cir. 04/15/2016), 2016 WL 1545629, p. 3, n. 6 (granting dismissal without prejudice for an exception of prematurity).

supersede Act 444. Such an action could induce this Commission to rescind the exemption created by the 2016 General Order and reclaim jurisdiction over nonprofit water cooperatives in a similar manner to our reassertion of authority in 2010. Thus, this matter should be dismissed without prejudice, so as to ensure that the Complainants could return to the Commission if jurisdiction should ever revert once again.²³

Conclusion

Based on the arguments raised by the parties, we conclude that this Commission presently lacks subject matter to continue to adjudicate the Complainants' petition. Accordingly,

IT IS HEREBY ORDERED that:

1. This proceeding be, and hereby is, DISMISSED WITHOUT PREJUDICE; and
2. This Order shall be effective immediately.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA**

May 11, 2017

/S/ SCOTT A. ANGELLE

DISTRICT II

CHAIRMAN SCOTT A. ANGELLE

/S/ ERIC F. SKRMETTA

DISTRICT I

VICE CHAIRMAN ERIC F. SKRMETTA

/S/ FOSTER L. CAMPBELL

DISTRICT V

COMMISSIONER FOSTER L. CAMPBELL

/S/ LAMBERT C. BOISSIERE

DISTRICT III

COMMISSIONER LAMBERT C. BOISSIERE, III



**EVE KAHAO GONZALEZ
SECRETARY**

/S/ MIKE FRANCIS

DISTRICT IV

COMMISSIONER MIKE FRANCIS

²³ To the extent that the parties' pleadings have raised additional arguments not expressly discussed herein, we reaffirm that those arguments have been considered and rejected.